

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: February 2, 2006

TO : Roberto Chavarry, Regional Director
Region 13

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Ornamental Iron Workers Local 63 560-2550-8300
Case 13-CC-2584 560-2550-8333
 560-2575-6767
 560-7540-2080-3700

This case was submitted for advice on whether the Union violated Section 8(b)(4)(i) and (ii)(B) of the Act by congregating near a common work site displaying a large inflatable rat, handbilling, and wearing vests with a message to boycott a neutral employer.

We conclude that, in these circumstances, the Union was engaged in activity to induce employees to withhold services from a neutral employer in violation of Section 8(b)(4)(i), but was not engaged in (ii) restraint or coercion.

FACTS

Glass Solutions, Inc., the primary employer here, is engaged in the business of installing aluminum framing, curtain wall, and glass. The primary has had a collective bargaining relationship with Local 27 of the Glaziers Union since 1999, and their current agreement is due to expire on June 1, 2006.

On October 15, 2005,¹ two business agents for Ornamental Iron Workers Local 63 (the Union) visited the primary. The Union agents stated that they knew the primary had a job coming up at 150 W. Superior (in downtown Chicago), and they would like representation on the job. The primary indicated it did not want to cause anybody any trouble, and that it would arrange for another contractor

¹ All dates hereafter are in 2005, except where indicated otherwise.

to get Union workers on the site. The Union asked the primary if it wanted to sign an agreement, and the primary declined, stating that it already had a contract with the Glaziers.

On around November 7, the primary began its work on a 12-story condominium building at 150 W. Superior. KBL Construction (the secondary) is the general contractor on the job, and the owner is JFJ Development. Next door to the site is an office building that houses the sales office and a model condominium unit on the 6th floor. KBL Construction has no business in this building.

On December 12 at around 11:00 a.m., four members of the Union arrived in front of the sales office building next door to 150 W. Superior Street. The four men wore bright orange vests that read, "Boycott KBL Construction, Architectural and Ornamental Iron Workers Local 63." They also passed out handbills with large stop sign symbols on them that read,

CONSUMERS

Please Boycott this Establishment

KBL CONSTRUCTION

Subs work to Glass Solutions, Inc. who does not pay
Area Standards Wages and Benefits
@150 W. Superior, Chicago, IL

BOYCOTT

SPEND YOUR MONEY WISELY

Cheaper Labor Equates to Poorer Quality.

In very small print at the bottom, the handbills read,

[The Union] is engaged in a labor dispute with
Glass Solutions for their failure to pay Area
Standards Wages and Benefits.

We are not seeking nor encouraging employees to
stop working or to stop making deliveries.

We are appealing only to the public.

The men parked a truck in front of the sales center with an inflatable rat in the truck bed, facing the sidewalk.² A sign was draped underneath the rat that read, "KBL, Please boycott this company." The men were stationary, did not patrol, and did not speak with consumers or employees. They were present until around 3:00 p.m., which is when employees at the construction site quit work.

The four Union men returned to the same location on December 20 and 21. They also appeared during the first week of January with a larger rat. The Union ceased its activity when the primary agreed to pay area standard wages to its workers on this jobsite.

ACTION

In agreement with the Region, we conclude that the Union's activity, consisting of displaying a large inflatable rat with a sign, handbilling, and wearing bright orange vests with a message targeting a neutral employer, was activity designed to induce employees to withhold services from a neutral employer in violation of Section 8(b)(4)(i)(B) of the Act. We further conclude that the Union's activity did not violate 8(b)(4)(ii).

Section 8(b)(4)(B) makes it unlawful for a labor organization or its agents (i) to induce or encourage employees to withhold services from their employer, or (ii) to threaten, coerce, or restrain any person, where an object is for that person to cease doing business with another employer. Picketing is both inducement or encouragement of neutral employees under 8(b)(4)(i)(B) and restraint or coercion of neutral employers under Section 8(b)(4)(ii)(B).³ In addition, in some circumstances, (i)

² Photographs indicate that the sidewalk in front of the building, located directly adjacent to the construction site, is the closest point to the worksite without requiring the Union agents to stand in the middle of traffic in a busy, downtown street. In addition, the photographs show that the truck and the handbillers were at the end of the building closest to the worksite.

³ See generally Service Employees Local 87 (Trinity Maintenance), 312 NLRB 715, 743 (1993), enfd. mem. 103 F.3d 139 (9th Cir. 1996) (citations omitted).

inducement of neutral employees qualifies as (ii) restraint and coercion of a neutral employer.⁴

Traditional union picketing involves individuals patrolling while carrying placards attached to sticks. The Board has long held, however, that the presence of traditional picket signs and/or patrolling is not a prerequisite for finding that a union's conduct is the equivalent of traditional picketing.⁵ The "important feature of picketing appears to be the posting by a labor organization . . . of individuals at the approach to a place of business to accomplish a purpose which advances the cause of the union, such as keeping employees away from work or keeping customers away from the employer's business."⁶

The concept of "signal picketing" was developed by the Board to describe union conduct that did not involve traditional picketing, but could be characterized as such because it evoked the same response as a traditional picket line. In other words, "'[s]ignal picketing' . . . describe[s] activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union."⁷ By directing such conduct

⁴ United Food and Commercial Workers Union (Carpenters Health & Welfare Fund), 334 NLRB 507, 509 n.8 (2001) (if the union successfully induced or encouraged employees to withhold their services in violation of 8(b)(4)(i), that would have constituted evidence of coercion of a neutral in violation of 8(b)(4)(ii)); Teamsters Local 315 (Santa Fe), 306 NLRB 616, 631 (1992).

⁵ See, e.g., Lawrence Typographical Union No. 570 (Kansas Color Press), 169 NLRB 279, 283 (1968), enfd. 402 F.2d 452 (10th Cir. 1968), citing Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965).

⁶ Stoltze Land & Lumber Co., 156 NLRB at 394.

⁷ Operating Engineers Local 12 (Hensel Phelps), 284 NLRB 246, 248 fn. 3 (1987) (citation omitted). Accord: International Broth. of Electric Workers, Local 98 (1987) (Telephone Man), 327 NLRB 593, 539 and fn. 3 (1999) (finding "signal picketing" at neutral gate where, among other things, union agent stood near gate and wore

at neutrals, a union can violate both 8(b)(4)(i) and (ii)(B).⁸

The General Counsel has previously argued that a union's use of a large inflated rat, which is a well-known symbol of a labor dispute, could constitute conduct tantamount to picketing intended to induce employees to withhold services or persuade third persons not to do business with these establishments. In Laborers' Eastern Region Organizing Fund and the Ranches at Mt. Sinai,⁹ the ALJ agreed that the display of a rat was the "functional equivalent of picketing" and violated Section 8(b)(4)(i).¹⁰ The ALJ explained that the rat "sent a signal to those who approached the entrance that a labor dispute was occurring and that action on their part was desired."¹¹

Here, we conclude that the Union's conduct in front of the building next to the worksite was signal picketing aimed at KBL Construction, a neutral, intended to induce employees of KBL and other neutral employers to withhold their services. First, we conclude that the Union's use of a large inflatable rat, combined with the large sign hanging from the truck and the message displayed on the Union representatives' vests, together constituted signal picketing. In this respect, a rat is a well-known symbol of a labor dispute and is a signal to third persons that there is an invisible picket line they should not cross.¹²

observer sign that flipped over to reveal same sign being used by union picketers at primary gate).

⁸ See generally Service Employees Local 87 (Trinity Maintenance), 312 NLRB at 743.

⁹ 2005 WL 1467350 (NLRB Div. of Judges, JD(NY)-22-05, June 14, 2005).

¹⁰ *Id.*, slip op. at 22. See, also Local 79, LIUNA (Calleo Development Corp.), Cases 2-CC-2546, et al., Appeals Minute dated January 24, 2003.

¹¹ Ibid.

¹² See Laborers' Eastern Region Organizing Fund, (rat's well-known meaning in the construction industry supports finding that it was being used as a signal to third persons that there was an invisible picket line), *supra.*, slip op. at 21.

The large sign hanging from the truck and the message on the vests served to amplify and reinforce that message. Second, we conclude that, in these circumstances, the picketing was aimed as a signal to induce employees to stop work. This is evident from the placement of the pickets right next door to the construction site - the Union's closest proximity to the worksite without standing in the middle of traffic on a busy, downtown street - combined with the fact that the picketers were present only when employees were working at the construction site.¹³ Therefore, the Union's conduct violated Section 8(b)(4)(i)(B) because it was picketing with the object of inducing employees of neutral employers to withhold their services.

We further conclude that the Union's conduct did not violate Section 8(b)(4)(ii)(B). The picketing here was not aimed at convincing consumers to boycott KBL Construction, as the message on the leaflets would suggest. The passing public would have no business with KBL Construction at this location, and therefore the Union could not have intended a cease-doing business object through a consumer appeal. Instead, the handbills were a sham, intended to mask the true intent of the activity, which was to induce employees to stop their work on behalf of KBL and other neutral employers at the jobsite.¹⁴

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union's conduct at 150 W. Superior violated Section 8(b)(4)(i). [FOIA Exemption 5

¹³ See *id.*, slip op. at 22 (inducement is shown in that the rat and handbilling began each day when the construction trades arrived).

¹⁴ We would not find a derivative 8(b)(4)(ii) violation in the absence of evidence that the Union succeeded in inducing employees from withholding their services. See fn. 4, above. Moreover, since the (i) allegation will remedy the unlawful conduct, an additional allegation would be both cumulative and unnecessary.

FOIA Exemption 5

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B.J.K.